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WILLIAM FRANKLIN GROUNDS.

FEBRUARY 7, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. NELSON, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1672.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1672) for the relief of William Franklin Grounds, have duly considered the same, and submit the following report:

From the proofs and official records it appears that the Hualapai tribe of Indians, numbering about 600, between the 1st day of February and the 1st day of April of the year 1874, left their reservation in Mohave County, Arizona Territory, and wrongfully strayed off into the region where Mr. Grounds had his cattle ranch, and while there and in the vicinity they killed, run off, and destroyed 106 cows, 250 head of other cattle, and 7 head of horses, the property of said William F. Grounds.

These cows were at that time worth not less than \$35 per head. Of the other cattle there were 92 head two-year old steers, of the average weight of 500 pounds per head; also 29 head three-year olds, of the average weight of 800 pounds per head, and 129 head of other cattle, of the average weight of 1,000 pounds per head; that these cattle were at that time of the value of 4½ cents per pound; that the horses referred to were of the aggregate value of \$500.

That this stock, when killed, was lawfully in the possession of said Grounds, and was kept by him at a place where he had the lawful right to keep the same, and that it was the moral and equitable duty of the Government to protect him in the possession and enjoyment of the same.

That said stock was killed, run off, or otherwise destroyed by said Indians, without the fault or negligence of said Grounds, and under such circumstances as would equitably entitle said Grounds to indemnity from the Government.

A bill similar to the one under consideration was before the Committee on Indian Affairs of this House in the Forty-seventh Congress, and was reported upon favorably by said committee, which report, for the more full and specific information of the House, is hereto attached and made part hereof.

Your committee do therefore recommend that the bill under consideration be amended by striking out in lines 6 and 7 of the printed bill the words "nineteen thousand one hundred and forty-seven" and inserting in lieu thereof the words "*thirteen thousand one hundred and twenty-nine*," and that the bill as so amended do pass.

[House Report No. 633, Forty-seventh Congress, first session.]

Mr. MASON, from the Committee on Indian Affairs, submitted the following report (to accompany bill H. R. 2824).

The Committee on Indian Affairs, to whom was referred the bill (H. R. 2824) for the relief of William Franklin Grounds, have duly considered the same, and submit the following report:

The testimony of eleven witnesses and the official reports of Indian agents and officers of the Army show substantially the following state of facts:

On the last of January, 1874, and for a long time prior thereto, the Hualapai Indians, a tribe in amity with the United States, were occupying the Camp Beale Spring, Reservation in Mohave County, Arizona Territory. They were, during their occupancy of that reservation, subsisted and cared for by the United States Government; were under the immediate charge of an agent of the Indian Bureau and in close proximity to the United States troops stationed at the same reservation. In consequence of the high price of subsistence in that part of the Territory, and on account of the many new settlements and mining camps springing up in the vicinity (Report Commissioner Indian Affairs, 1873 page 285), the Secretary of the Interior directed that these Indians should be removed to the "Colorado River Reservation," 180 miles south, and at that time occupied by other tribes. Under the fear of this removal, the Hualapai Indians numbering 600, after receiving their issue of Government rations, quietly left their reservation at Camp Beale Springs about February 1, 1874, and did not return until about April 1, 1874.

Forty miles from this reservation, at Truxton Springs, is the cattle ranch of the claimant, William Franklin Grounds, and not far from the ranch is the Hualapai range of mountains. In the valleys, cañons, and ravines of these mountains these Indians took refuge, from which they made frequent forays, killing and stealing the cattle and horses of Mr. Grounds, upon which they subsisted during the entire period of their absence from the reservation. It appears that every effort was employed and every precaution used by claimant to lawfully protect his property and avoid a conflict with the Indians which could be expected from a prudent man and a good citizen. As soon as he discovered these Indians stealing his cattle and anticipated the danger attending the protection of his property, he made application to the commanding officer at Camp Beale Springs, and also to General Crook, commanding the Department of Arizona, for a detail of troops. These they were unable to send him, and not receiving protection for himself and property from the Government, he employed, at his own expense, four additional herders, one of whom was severely wounded by these Indians while trying to prevent them stealing the cattle of his employer.

These depredations upon the cattle and horses of Mr. Grounds continued until about the 1st of April, 1874, when the Indians returned to their reservation at Camp Beale Springs, where they remained, and again received subsistence from the Government. On being interrogated by the commanding officer of the post, and by the Indian agent in charge, the Indians admitted killing and stealing the cattle of Mr. Grounds, and stated that they were willing that the number of cattle stolen should be deducted from the rations to be issued to them.

Mr. Grounds, whose good character and strict integrity are testified to by reliable citizens of the Territory, and certified to by the officers and agents of the Government, places the number of cattle stolen from him by the Hualapai Indians between February 5, 1874, and the last of March, 1874, at 356, and the number of horses at 7. He is, in the material part of this testimony, corroborated by experienced stockmen in the Territory, who saw his herd just before and examined it just after and during the depredation, and also by the testimony of his herders. The Indian agent, W. E. Morford, who was directed by the Commissioner of Indian Affairs to investigate this case, and who re-examined the claimant, his witnesses, and the Indians, states in his report under date of August 22, 1876, that the captains of the different bands of Hualapai Indians admitted the depredations charged by Mr. Grounds, and gave the number of his cattle killed by their people at about *five hundred*. There are no persons so likely to know and as able to state the number of cattle stolen and killed as the Indians who slaughtered and ate them, and Mr. Grounds who owned, guarded, and frequently counted them. His honesty and fairness of statement are made more apparent in placing the number stolen at a less number than that estimated by the stockmen and herders, and that stated by the Indians.

Your committee are therefore of the opinion that the number of cattle stolen is as accurately stated as it would be just and reasonable to require under the circumstances of their taking. Had the cattle been delivered under a contract, such an action would have been eminently proper, but having been stealthily or forcibly driven off to the mountains or killed by a band of hungry and desperate Indians, it would be unjust to demand, and impossible for him to supply, testimony that each steer or horse was counted when taken.

The superior quality and the estimated weight and value of these cattle, and the market price of the horses and cows are testified to by seven competent witnesses. From this testimony it appears that these cattle were far above the average of Texas cattle. Mr. Grounds swears that he paid \$7 per head more than the market price for the privilege of selecting his cattle from the herd when he purchased them in Texas. He states the number and age and average weight of the 250 cattle as follows:

	Pounds.
129 beef cattle, 650 pounds net each (1,074½ pounds per head)	83,850
29 beef cattle, 3 years old, 500 pounds net each (826½ pounds per head)....	14,500
67 beef cattle, 2 years old, 375 pounds net each (619½ pounds per head).....	25,125
25 beef cattle, 2 years old, 300 pounds net each (496 pounds per head).....	7,500
250 Total	130,975

He also states that the price of beef at that time at Mineral Park, near his ranch, was 10 and 11 cents per pound net. The 106 cows stolen he valued at \$40 per head.

Thomas Shipp, a ranchman and cattle raiser near Mineral Park, Ariz., testifies that he considers Mr. Grounds's herd the best in the Territory; that he saw the butcher at Mineral Park weigh some of the cattle he bought from Mr. Grounds, and they weighed 1,425 pounds gross; that he sold his cattle in the spring of 1874 from 9½ cents to 11 cents per pound net.

Benjamin Spear, a merchant at Mineral Park, states that beef in the spring of 1874 was worth 10 cents per pound, and that Mr. Grounds received 11 cents per pound net for what he sold. James W. Cureton, James Calvin Cureton, and William H. Leahy, cattle herders, say the cattle of Mr. Grounds were fatter and larger than the average Texas cattle, and considered them the best Texas cattle they had seen in the Territory, being all selected. All these witnesses, with Joel McKee, a farmer and stock breeder, who has been dealing in horses and cattle since 1847, and all of whom frequently saw these cattle, estimate the average weight of each kind the same as Mr. Grounds has done, as heretofore shown.

Mr. Morford, the Indian agent, says, in his report upon this subject, that after examining all the witnesses he had private conversations with citizens and neighbors of Mr. Grounds, and found that he had taken great care in the selection of his stock, and had already acquired an enviable reputation for the quality of his cattle and for his straightforwardness in all his dealings.

Both the officers of the Army and the Indian agents who were present and investigated this case say that it is a just claim, and Mr. W. E. Morford, the Indian agent who made the last and fullest investigation of the claim, in his report thereon, says:

"I feel perfectly assured that \$40,000 would not remunerate Mr. Grounds for his losses when we take into consideration the natural increase of his stock. * * * I do not hesitate to say that I think the total sum claimed by Mr. Grounds, viz, \$19,147.25, is a just and honest claim, and that he should be reimbursed by the Government at as early a date as possible."

All the witnesses heretofore named state that the cows were cheap at \$40 per head, and after describing the horses stolen, and giving the brands, fix the market value of the seven at \$500.

The Commissioner of Indian Affairs, in an official communication, reports that the contract price paid by the Government for beef at the Colorado River Reservation, Arizona, for the fiscal year beginning July 1, 1873, and ending June 30, 1874, was from \$4 to \$5 per hundred gross, which, at \$5, is equivalent to over \$10 per 100 pounds net, as will be seen from the following rule and example: " $\frac{1}{100}$ of the live weight is a near approximation to the net weight. For example, a living ox weighs 1,272 pounds; its net weight is 762.56 pounds." (Tracy's Commercial and Mechanical Arithmetic, p. 33.)

Upon the testimony and official data the committee find that the average weight of the 250 beef cattle was 524 pounds each, and estimating them at the contract price paid at that time in that locality by the Government, and at the lowest instead of the highest price fixed by the witnesses, the average price per head would be \$52.40, and

For the 250 head a total of	\$13,100
One hundred and six cows, at \$40 per head	4,240
Seven horses	500
Total	17,840

The committee believe that these prices fixed by reliable witnesses and the contract price of the Government was the fair market value at that time and at that place. Truxton Springs, and Mineral Park its market, are in the northwest corner of the Territory, remote from lines of transportation, and the time just at the close of the Apache war, when cattle were comparatively scarce and high in the Territory.

It appears from the evidence, and partly from the report of the Commissioner of Indian Affairs for 1881, that the Hualapai Indians have always been friendly to the Government, and that one hundred of their warriors were supplied with arms and served under General Crook in his campaign against the hostile Apaches. A. A. Spear, who was a scout for General Crook in the Apache campaign, and who lived at Camp Beale Springs at the time these Indians left the reservation, says that at the close of the Apache campaign all, except forty of these hundred warriors, gave up the arms which had been issued to them. These forty were permitted to retain their Government arms and remain in service at Camp Beale Springs. Among those who deserted the reservation were these forty warriors armed with Government rifles, and acting as an auxiliary force in case of a fresh outbreak by the Apaches. The Government was therefore under some obligations to these Indians. It was at the same time bound to protect its citizens against the acts of its allies, whom it had armed and thereby rendered capable of committing these depredations.

These acts, from the admissions of the Indians, were not committed through any enmity for Mr. Grounds, nor for the purpose of gratifying malice or seeking revenge. It was for the sole purpose of subsisting themselves in the mountains, during a period which the Government should and would have fed them had they remained at the reservation.

If we commute the per diem ration for each Indian on the basis given by the Commissioner of Indian Affairs in his report for 1878 (p. XIII), we shall find that the Government, during the period these Indians were absent and subsisting on the horses and cattle of Mr. Grounds, saved in subsistence stores about \$8,000.

Your committee are satisfied that the claim of Mr. Grounds is a just one; and that the Government is under obligations to compensate him for these losses. In arriving at these conclusions, your committee are guided by numerous legislative precedents in cases similar to this, and by the principles declared by eminent publicists. They believe that it would be in violation of the spirit of our institutions to impose on *one citizen* the burdens which should be borne by all, and that the citizen who pays taxes, bears arms, serves on juries, and bears his just proportion of the burdens of Government, and complies with all its exactions, is entitled to security in person and property, and to the prompt fulfillment by the Government or all the obligations it is under to him as a citizen.

The Committee on Indian Affairs of the United States Senate, first session, Thirty-fourth Congress, to whom was referred a bill authorizing the payment of certain claims for Indian depredations, and in which the equities were not as clear and strong as those which exist in this case, say:

"The spoliation for which redress is now sought were caused by predatory expeditions, undertaken without lawful authority and without cause, as likewise without the usual formalities, and solely with the view to plunder, and is therefore excepted by Vattel and all the approved publicists from the principle under which redress is here sought to be derived, and brings it within the principle under which, by the practice of all civilized nations, the citizen or subject has been held entitled to indemnity, and under which this Government has uniformly extended redress." (Senate Report, No. 244, first session, Thirty-fourth Congress, vol. 2.)

These great principles of government have been recognized, and passed into a compact between this Government and the citizen in the several "*trade and intercourse laws*" enacted by Congress in 1802, 1834, and 1859. Since then, it has repeatedly, in the hundreds of private acts for relief, recognized its obligations to pay the citizen out of the Treasury of the United States, for losses sustained by Indian depredations. It has gone even further, and paid friendly Indians for losses sustained at the hands of hostiles of the same tribe, when they, the hostiles, failed to make restitution of the property stolen as stipulated in the articles of capitulation. The Committee on Indian Affairs of the United States Senate, to whom was referred the memorial of the heirs of Robert McConnel, in connection with the above case, in their report recommending the passage of the bill for their relief, say:

"The Government has indemnified the friendly Creek Indians by a large appropriation for the non-performance of the article of capitulation, and, your committee think, rightfully. The same principle demands the same indemnity for the petitioners unless it be held that the Government is under higher obligations to cause justice to be done the Indians than to her own citizens." (Senate Report 243, first session Thirty-fourth Congress, vol. 2.)

In November, 1873, Mr. Grounds, who had been in Texas since the spring of 1872, returned to his ranch in Arizona, driving his herd of cattle on receipt of the notice sent out by General Crook, commanding the Department of Arizona, that the hostile Apaches were subdued, and that citizens might return to the Territory without fear of harm to person or property. On the faith of this notice, and, as we are bound to presume, on the faith of the promise implied in the acts of February 28, 1859, and July 15, 1870 (2156 and 2098 Rev. Stats.), and the faith of legislative precedents in granting relief in such cases heretofore, the claimant risked his property in the Ter-

ritory, bore his just share of the burdens and expense of Government, and as the testimony shows, fulfilled all the requirements of the law and the rules of the department.

The Commissioner of Indian Affairs, in forwarding the report of the Indian agent, W. E. Morford, to the Secretary of the Interior, and by him transmitted to the Speaker of the House of Representatives under date of January 11, 1882, admits that the depredation is fully proven, and says: "I now recommend that Congress be requested to act upon the case on its merits as disclosed in the papers."

Your committee are satisfied from the testimony that the number of beef cattle stolen from Wm. Franklin Grounds by the Hualapai Indians was not less than 250, that the number of cows was 106, and the number of horses 7.

They are also satisfied from the testimony and official data that the value fixed by the witnesses and the contract price of the Government was the fair market value in that section at that time, and in taking the lowest estimate have discriminated in favor of the Government.

Believing, as your committee do, that the Government should be as prompt in fulfilling its obligations to the citizen as the citizen is required to be in the performance of his duty to it, and that it should not set the example of evasion of duty or repudiation of just debts, we recommend that the bill be amended by striking out the words, "three hundred and fifty-six" in lines 7 and 8 and inserting in lieu thereof the words, "two hundred and fifty," and also by striking out the words, "nineteen thousand one hundred and forty-seven," in lines 6 and 7, and inserting in lieu thereof the words, "seventeen thousand eight hundred and forty," and as thus amended we recommend the passage of the bill.

H. Rep. 253—2

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